

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
LINDA GREAVES-BEY	:	ORDER
	:	DTA NO. 817940
for Redetermination of a Deficiency or for Refund of	:	
New York State Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1997 and 1998	:	

Petitioner, Linda Greaves-Bey, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 the Tax Law for the years 1997 and 1998.

A hearing was scheduled before Dennis M. Galliher, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York on May 10, 2001 at 10:30 A.M. Petitioner failed to appear and a default determination was duly issued. Petitioner has made a written request that the default determination be vacated.

Petitioner appeared *pro se*. The Division of Taxation ("the Division") appeared by Barbara G. Billet, Esq. (Kevin R. Law Esq., of counsel).

Upon a review of the evidence and arguments presented Chief Administrative Law Judge Andrew F. Marchese issues the following order.

FINDINGS OF FACT

1. On July 31, 2000, the Division of Tax Appeals received a petition from Linda Greaves-Bey protesting a conciliation order issued by the Bureau of Conciliation and Mediation Services which sustained a Notice of Deficiency and a Denial of Refund of New York State personal

income tax for the years 1997 and 1998. Petitioner's position is that she is exempt from tax since she is a Moorish-American who is a member of the Moorish Science Temple of America, Inc.

2. On January 16, 2001, the calendar clerk of the Division of Tax Appeals sent a notice to schedule hearing to petitioner and to the Division of Taxation's attorney, Kevin R. Law, Esq., directing them to set a mutually convenient date for a hearing during the months of May or June of 2001. The calendar clerk was to be advised of the agreed upon date by February 23, 2001.

3. The Division responded on February 23, 2001 with a request that the hearing be held on May 10, 2001 in Troy, New York. The Division's attorney indicated that there had been no agreement with petitioner on the hearing date selected. Petitioner did not respond to the Notice to Schedule Hearing.

4. On April 2, 2001, Daniel J. Ranalli, Assistant Chief Administrative Law Judge, sent a Notice of Hearing to the parties informing them that a hearing had been scheduled for Thursday, May 10, 2001 at 10:30 A.M. in Troy, New York. On April 9, 2001, petitioner wrote to Assistant Chief Administrative Law Judge Ranalli to indicate that she did not agree to appear at the hearing but wished to submit documents to prove her immunity from the tax laws. On April 13, 2001, Judge Ranalli offered petitioner the option of litigating her case by submission without hearing under section 3000.12 of the Rules of Practice and Procedure of the Tax Appeals Tribunal (20 NYCRR 3000.12). Petitioner responded on May 2, 2001. While petitioner would not agree to waive her hearing, she also indicated that she would not be participating in the hearing scheduled for May 10, 2001.

5. On May 10, 2001, at 10:35 A.M., Administrative Law Judge Dennis M. Galliher called the matter for hearing. Petitioner did not appear at the hearing. Mr. Law appeared for the Division and moved that a default order be issued to petitioner for her failure to appear.

6. On September 6, 2001, Judge Galliher issued a default determination against petitioner.

7. On September 16, 2001, petitioner filed an application to vacate the default determination. Petitioner's application contained a card purporting to be an "identification and tax exempt card," as well as a document entitled "Notice of Cancellation and Declaration" which consists of several pages of legal terms haphazardly strung together and which as a whole constitutes nothing of any apparent legal significance.

8. The Division of Taxation responded to the application by letter dated September 27, 2001. In its letter, the Division points out that petitioner has shown neither a reasonable excuse for not appearing at hearing nor a meritorious case. The Division's representative also cites to a Federal Tax Court case which has found cases such as petitioner's to be frivolous.

CONCLUSIONS OF LAW

A. As provided in the Rules of Practice and Procedure of the Tax Appeals Tribunal, "In the event a party or the party's representative does not appear at a scheduled hearing and an adjournment has not been granted, the administrative law judge shall, on his or her own motion or on the motion of the other party, render a default determination against the party failing to appear." (20 NYCRR 3000.15[b][2].) The rules further provide that: "Upon written application to the supervising administrative law judge, a default determination may be vacated where the party shows an excuse for the default and a meritorious case." (20 NYCRR 3000.15[b][3].)

B. There is no doubt based upon the record presented in this matter that petitioner did not appear at the scheduled hearing or obtain an adjournment. Therefore, the Administrative Law

Judge correctly granted the Division's motion for default pursuant to 20 NYCRR 3000.15(b)(2) (*see, Matter of Zavalla*, Tax Appeals Tribunal, August 31, 1995; *Matter of Morano's Jewelers of Fifth Avenue*, Tax Appeals Tribunal, May 4, 1989). Once the default order was issued, it was incumbent upon petitioner to show a valid excuse for not attending the hearing and to show that she had a meritorious case (20 NYCRR 3000.15[b][3]; *see also, Matter of Zavalla, supra; Matter of Morano's Jewelers of Fifth Avenue, supra*).

C. Petitioner has not established a valid excuse for her failure to appear at the hearing. In fact, petitioner has not addressed this issue in her request. Accordingly, I find that petitioner has not demonstrated that she had a reasonable excuse for failing to appear at her hearing and thus has failed to meet the first criterion to have the default order vacated.

D. Petitioner has also failed to establish a meritorious case. The courts have ruled repeatedly that membership in the Moorish Science Temple of America does not bestow tax exemption on its members (*see, Moshesh Eleazar Ezekunu-Bey 1st v. Commissioner*, 47 TCM 1180). Therefore, petitioner has failed to show a meritorious case.

E. It is ordered that the request to vacate the default order be, and it is hereby, denied and the Default Determination issued September 6, 2001 is sustained.

DATED: Troy, New York
November 21, 2001

/s/ Andrew F. Marchese
CHIEF ADMINISTRATIVE LAW JUDGE